

 **Southwestern Bell Mobile Systems**

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July 8, 1994

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Attorney

Via Federal Express
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Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Stop Code 1170
Washington, D.C. 20554

**RE: FCC CC Docket NO. 94-46 Comments of Southwestern
Bell Corporation**


Dear Mr. Caton:

Enclosed for filing in the above referenced proceeding are the original and five copies of the Comments of Southwestern Bell Corporation. Please file these Comments among the papers in this proceeding.

Please return a file-marked copy of the Comments to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Very truly yours,


Darryl W. Howard

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of)
)
Amendment of Part 22)
of the Commission's Rules)
to Delete Section 22.119)
and Permit the Concurrent)
Use of Transmitters in Common)
Carrier and Non-Common)
Carrier Services)

CC Docket No. 94-46

COMMENTS OF
SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

Southwestern Bell Mobile Systems, Inc. ("Southwestern Bell" or "SBMS") hereby files these Comments to the Notice of Proposed Rule Making and Order released by the Commission on June 9, 1994. Southwestern Bell fully supports the Commission's proposal to eliminate Section 22.119, which prohibits the use of common carrier transmitters to provide private radio services.

The proposal rests on three bases - (i) the elimination of artificial inefficiencies caused by requiring separate transmitters for the two types of services; (ii) lack of any inconsistency with Congressional action or its own recent rule making orders; and (iii) that competition provides sufficient assurances that customers will not suffer from the elimination of the rule. Southwestern Bell believes each provides ample support for the Commission's proposal.

Those reasons reflect the fundamental conclusion that Congress and the Commission are increasingly arriving at -

that competition is the best method of regulating those offering services in the same market. To allow for competition to fulfill that role, the Commission must act to eliminate regulatory restrictions that place limits on competitors, especially where a restriction hampers only some competitors but not others.

The existing Rule does exactly that. As the Commission recognized in its Second Report and Order in General Docket No. 93-252, private carrier paging competes with common carrier paging for the same customers.¹ Given that "there are no real differences between private carrier and common carrier paging systems,"² both categories of competitors should be regulated in the same manner.

Currently, the Commission cannot treat private carrier paging in the same manner as common carrier paging due to the three-year transition afforded certain private carriers under the Omnibus Budget Reconciliation Act of 1993.³ However, the Commission can alleviate the restrictions faced by common carriers by allowing them to compete on a more level ground with the private carriers now. The proposal by the Commission to eliminate Section 22.119 is an extremely

¹See In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, released March 7, 1994, at para. 97.

²Id. Accordingly, private carrier paging is in the process of being classified as a commercial mobile radio service.

³Pub. L. No. 103-66, Title VI, Section 6002, 107 Stat. 312, 392 (1993). Section 6002(b)(2)(A) amends Sections 3(n) and 332 of the Communications Act of 1934, as amended.

cheap and effective way to do just that by allowing common carriers the flexibility to provide private services with the same transmitters used to provide common carrier services.⁴

The efficiencies that the Commission foresees would undoubtedly be experienced, with the increased competition ensuring the public would not be harmed but indeed benefitted with better, more varied services at lower prices. Such a move by the Commission would not only be consistent with Congressional action, it would clearly advance Congressional direction and intent.

The simple fact of the matter is the current Section 22.119 is a rule that has been rendered obsolete by the tremendous technological and marketplace changes of the last few years. Currently, the Rule only deprives the public of the full benefits of competition, and providers of

⁴In much the same manner, cellular carriers are prevented from using already allocated spectrum and their investment to provide private services and compete more directly with private radio carriers such as specialized mobile radio providers. SBMS urges the Commission to grant the relief requested in GN Docket No. 93-252 necessary to allow cellular carriers to also offer private services using cellular spectrum and existing equipment.

the ability to use telecommunications facilities to their fullest capabilities and efficiencies. The Rule is clearly one whose time has come and gone, and should be eliminated.

Respectfully submitted,

SOUTHWESTERN BELL
MOBILE SYSTEMS, INC.

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